

SENATE BILL NO. 388

INTRODUCED BY B. TASH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE STATE ASSUMPTION OF DISTRICT COURT
5 COSTS BY TRANSFERRING FUNCTIONS AND COSTS ASSOCIATED WITH THE JUVENILE PROBATIONS
6 OFFICE STAFF, YOUTH DIVISION OFFICE STAFF, AND ASSESSMENT OFFICERS AND STAFF OF THE
7 YOUTH COURT FROM THE JUDICIAL BRANCH TO THE DEPARTMENT OF CORRECTIONS;
8 TRANSFERRING ADMINISTRATIVE PERSONNEL AND COSTS FROM THE JUDICIAL BRANCH TO THE
9 DEPARTMENT OF CORRECTIONS; AMENDING SECTIONS 3-1-1602, 3-5-901, 41-3-205, 41-5-102, 41-5-103,
10 41-5-105, 41-5-201, 41-5-203, 41-5-215, 41-5-321, 41-5-322, 41-5-331, 41-5-343, 41-5-355, 41-5-1201,
11 41-5-1202, 41-5-1203, 41-5-1204, 41-5-1205, 41-5-1210, 41-5-1301, 41-5-1302, 41-5-1304, 41-5-1401,
12 41-5-1432, 41-5-1501, 41-5-1503, 41-5-1504, 41-5-1511, 41-5-1512, 41-5-1513, 41-5-1522, 41-5-1523,
13 41-5-1605, 41-5-1701, 41-5-2503, 44-4-304, 46-18-1001, 52-2-211, 52-5-107, AND 53-1-203, MCA;
14 REPEALING SECTIONS 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132,
15 41-5-1524, 41-5-1702, 41-5-1703, 41-5-1706, 41-5-1707, 41-5-2001, 41-5-2002, 41-5-2003, 41-5-2004,
16 41-5-2005, 41-5-2006, AND 52-5-109, MCA; AND PROVIDING AN EFFECTIVE DATE."

17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19

20 **Section 1.** Section 3-1-1602, MCA, is amended to read:21 **"3-1-1602. District court council -- appointment -- composition -- duties -- staggered terms -- staff.**

22 (1) There is a district court council. The council must be composed of nine members as follows:

23 (a) the chief justice of the supreme court or a designee of the chief justice;

24 (b) four district court judges elected by district court judges, one of whom must be from a judicial district
25 that does not contain a first-class city as provided in 7-1-4111; and

26 (c) the following ex officio, nonvoting members appointed by the supreme court:

27 (i) one ~~chief juvenile probation~~ and parole officer ~~nominated~~ designated by the ~~Montana juvenile~~
28 ~~probation officers association~~ department of corrections;

29 (ii) one clerk of the district court nominated by the Montana association of clerks of district courts;

30 (iii) one county commissioner nominated by the Montana association of counties; and

- 1 (iv) one court reporter nominated by the Montana court reporters association.
- 2 (2) The chief justice or the chief justice's designee shall serve as the presiding officer of the council and
3 shall appoint a vice presiding officer to act in the absence of the presiding officer.
- 4 (3) The district court council shall develop and adopt policies and procedures, subject to review by the
5 supreme court, to administer the state funding of district courts. The policies and procedures must address but
6 not be limited to the following issues related to district courts:
- 7 (a) workload;
- 8 (b) resource allocation among the district courts;
- 9 (c) hiring policies;
- 10 (d) court procedures;
- 11 (e) information technology;
- 12 (f) for court reporters, work schedules, transcript fees, and equipment; and
- 13 (g) other issues regarding the state funding of district courts.
- 14 (4) Each district court judge shall retain the inherent power to select and appoint the judge's own
15 necessary assistants and employees and to direct the performance of their duties.
- 16 (5) The chief justice of the supreme court shall serve on the council during the term of election or
17 appointment. Other members shall serve staggered 3-year terms.
- 18 (6) The court administrator shall provide sufficient support to the council to allow it to carry out its
19 statutory duties.
- 20 (7) The council shall provide reports to the legislature and supreme court upon request."

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- 22 **Section 2.** Section 3-5-901, MCA, is amended to read:
- 23 **"3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court
24 program. Under this program, the state shall fund all district court costs, except as provided in subsection (2).
25 These costs include but are not limited to:
- 26 (a) salaries and benefits for:
- 27 (i) district court judges;
- 28 (ii) law clerks;
- 29 (iii) court reporters, as provided in 3-5-601; and
- 30 ~~(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court;~~

1 and

2 ~~(v)~~(iv) other employees of the district court;

3 (b) in criminal cases, fees for transcripts of proceedings, as provided in 3-5-604, witness fees and
4 necessary expenses, juror fees, and expenses for psychiatric examinations;

5 (c) the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21,
6 and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

7 (d) the following expenses incurred by the state in federal habeas corpus cases that challenge the
8 validity of a conviction or of a sentence:

9 (i) transcript fees;

10 (ii) witness fees; and

11 (iii) expenses for psychiatric examinations;

12 (e) the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3,
13 part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or
14 termination of the parent-child legal relationship and permanent custody:

15 (i) transcript fees;

16 (ii) witness fees;

17 (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or
18 other person having physical or legal custody of the youth except for expenses for services that a person is
19 eligible to receive under a public program that provides medical or psychological evaluation;

20 (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

21 (v) expenses associated with court-ordered alternative dispute resolution;

22 (f) costs of juror and witness fees and witness expenses before a grand jury;

23 (g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage
24 on children, as required in 40-4-226, and expenses of education when ordered for the investigation and
25 preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

26 (h) all district court expenses associated with civil jury trials if those expenses were paid out of the
27 district court budget in fiscal year 1998 or fiscal year 1999; and

28 (i) all other costs associated with the operation and maintenance of the district court, including contract
29 costs for court reporters who are independent contractors, costs of the youth court ~~and youth division offices,~~
30 and costs of training for persons listed in subsections (1)(a)(i) through ~~(1)(a)(v)~~ (1)(a)(iv), but excluding the cost

1 of providing district court office, courtroom, and other space as provided in 3-1-125.

2 (2) For the purposes of subsection (1), district court costs do not include:

3 (a) one-half of the salaries of county attorneys;

4 (b) salaries of deputy county attorneys;

5 (c) salaries of employees and expenses of the office of county attorney;

6 (d) costs for clerks of district court and employees and expenses of the office of the clerks of district
7 court; or

8 (e) costs of providing district court office space.

9 (3) In addition to the costs assumed under the state-funded district court program, as provided in
10 subsection (1), the state shall fund:

11 (a) the expenses of the appellate defender program. These costs must be allocated to and paid by the
12 appellate defender program.

13 (b) district court expenses related to involuntary commitment proceedings and youth court proceedings
14 in an annual amount not to exceed the district court expense for those proceedings in fiscal year 2001 plus a
15 3% growth factor each year. Any amount that exceeds the district court expense for those proceedings is the
16 responsibility of the county.

17 (4) (a) In addition to the costs assumed under the state-funded district court program, as provided in
18 subsection (1), the state shall reimburse counties:

19 (i) in district court criminal cases only, expenses for indigent defense; and

20 (ii) in proceedings under subsection (1)(e):

21 (A) expenses for appointed counsel for the youth; and

22 (B) expenses for appointed counsel for the parent, guardian, or other person having physical or legal
23 custody of the youth.

24 (b) If money appropriated for the expenses listed in subsection (4)(a) is insufficient to fully fund those
25 expenses, the county is responsible for payment of the balance. (Subsections (3)(b) and (4)(b) terminate June
26 30, 2003--sec. 65, Ch. 585, L. 2001.)"

27

28 **Section 3.** Section 41-3-205, MCA, is amended to read:

29 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
30 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken

1 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
2 as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly
3 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
4 misdemeanor.

5 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The
6 court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before
7 it.

8 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless
9 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
10 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
11 following persons or entities in this state and any other state or country:

12 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal
13 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and
14 that otherwise meets the disclosure criteria contained in this section;

15 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
16 family or child who is the subject of a report in the records or to a person authorized by the department to receive
17 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
18 placement;

19 (c) a health or mental health professional who is treating the family or child who is the subject of a report
20 in the records;

21 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of
22 a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any
23 person who reported or provided information on the alleged child abuse or neglect incident contained in the
24 records;

25 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian
26 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by
27 the court to represent a child in a pending case;

28 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

29 (g) approved foster and adoptive parents who are or may be providing care for a child;

30 (h) a person about whom a report has been made and that person's attorney, with respect to the

- 1 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
2 person whose safety may be endangered;
- 3 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
4 an alleged perpetrator of child abuse or neglect;
- 5 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
6 that is authorized by the department to conduct the research or evaluation;
- 7 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
8 group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan,
9 and monitoring the plan;
- 10 (l) the coroner or medical examiner when determining the cause of death of a child;
- 11 (m) a child fatality review team recognized by the department;
- 12 (n) a department or agency investigating an applicant for a license or registration that is required to
13 operate a youth care facility, day-care facility, or child-placing agency;
- 14 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
15 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
16 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
17 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
18 children, persons with developmental disabilities, or older persons posed by the person about whom the
19 information is sought, as determined by the department.
- 20 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
21 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
22 privacy rights of the child or the child's parent or guardian, as determined by the department;
- 23 (q) an employee of the department or other state agency if disclosure of the records is necessary for
24 administration of programs designed to benefit the child;
- 25 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary
26 to meet requirements of the federal Indian Child Welfare Act;
- 27 (s) a youth probation and parole officer who is working in an official capacity with the child who is the
28 subject of a report in the records;
- 29 (t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure
30 is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

- 1 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
2 board established under Title 41, chapter 3, part 10;
- 3 (v) a school employee participating in an interview of a child by a social worker, county attorney, or
4 peace officer, as provided in 41-3-202;
- 5 (w) a member of a county interdisciplinary child information team formed under the provisions of
6 52-2-211;
- 7 (x) members of a local interagency staffing group provided for in 52-2-203; or
8 ~~(y) a member of a youth placement committee formed under the provisions of 41-5-121; or~~
9 ~~(z)~~(y) a principal of a school or other employee of the school district authorized by the trustees of the
10 district to receive the information with respect to a student of the district who is a client of the department.
- 11 (4) A school or school district may disclose, without consent, personally identifiable information from
12 the education records of a pupil to the department, the court, a review board, and the child's court-appointed
13 attorney, guardian ad litem, or special advocate.
- 14 (5) Information that identifies a person as a participant in or recipient of substance abuse treatment
15 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
16 provisions of the law.
- 17 (6) A person who is authorized to receive records under this section shall maintain the confidentiality
18 of the records and may not disclose information in the records to anyone other than the persons described in
19 subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the
20 proceedings confidential.
- 21 (7) A news organization or its employee, including a freelance writer or reporter, is not liable for
22 reporting facts or statements made by an immediate family member under subsection (6) if the news
23 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
24 proceeding.
- 25 (8) This section is not intended to affect the confidentiality of criminal court records, records of law
26 enforcement agencies, or medical records covered by state or federal disclosure limitations.
- 27 (9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
28 section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided
29 without cost."
30

1 **Section 4.** Section 41-5-102, MCA, is amended to read:

2 **"41-5-102. Declaration of purpose.** The Montana Youth Court Act must be interpreted and construed
3 to effectuate the following express legislative purposes:

4 (1) to preserve the unity and welfare of the family whenever possible and to provide for the care,
5 protection, and wholesome mental and physical development of a youth coming within the provisions of the
6 Montana Youth Court Act;

7 (2) to prevent and reduce youth delinquency through a system that does not seek retribution but that
8 provides:

9 (a) immediate, consistent, enforceable, and avoidable consequences of youths' actions;

10 (b) a program of supervision, care, rehabilitation, detention, competency development, and community
11 protection for youth before they become adult offenders; and

12 (c) in appropriate cases, restitution as ordered by the youth court;

13 (3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible,
14 separating the youth from the parents only when necessary for the welfare of the youth or for the safety and
15 protection of the community;

16 (4) to achieve the purposes of subsections (1) and (2) while preserving the rights of parents to make
17 important decisions concerning their child's health and welfare;

18 ~~(4)(5)~~ to provide judicial procedures in which the parties are ensured a fair, accurate hearing and
19 recognition and enforcement of their constitutional and statutory rights."

20

21 **Section 5.** Section 41-5-103, MCA, is amended to read:

22 **"41-5-103. Definitions.** As used in ~~the Montana Youth Court Act~~ this chapter, unless the context
23 requires otherwise, the following definitions apply:

24 (1) "Adult" means an individual who is 18 years of age or older.

25 (2) "Agency" means any entity of state or local government authorized by law to be responsible for the
26 care or rehabilitation of youth.

27 (3) "Assessment officer" means a person who is ~~authorized~~ hired by the ~~court~~ department to provide
28 initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

29 (4) "Commit" means to transfer legal custody of a youth ~~to the department or to the youth court~~.

30 (5) "Correctional facility" means a public or private, physically secure residential facility operated by or

1 under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

2 ~~(6)~~ "Cost containment funds" means funds retained by the department under 41-5-132 for distribution
3 by the cost containment review panel:

4 ~~———(7)~~ "Cost containment review panel" means the panel established in 41-5-131.

5 ~~(8)~~(6) "Court", when used without further qualification, means the youth court of the district court.

6 ~~(9)~~(7) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant
7 to 41-5-206.

8 ~~(10)~~(8) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth
9 has been given but does not include a person who has only physical custody.

10 ~~(11)~~(9) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the
11 Montana Youth Court Act as a youth:

12 (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense;

13 or

14 (b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who
15 has violated any condition of probation.

16 ~~(12)~~(10) "Department" means the department of corrections provided for in 2-15-2301.

17 ~~(13)~~(11) (a) "Department records" means information or data, either in written or electronic form,
18 maintained by the department pertaining to youth who are committed under 41-5-1512~~(4)~~(e)(1)(b) or
19 41-5-1513(1)(b) or who are under parole supervision.

20 (b) Department records do not include information provided by the department to the department of
21 public health and human services' management information system.

22 ~~(14)~~(12) "Detention" means the holding or temporary placement of a youth in the youth's home under
23 home arrest or in a facility other than the youth's own home for:

24 (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into
25 custody and before final disposition of the youth's case;

26 (b) contempt of court or violation of a valid court order; or

27 (c) violation of a youth parole agreement.

28 ~~(15)~~(13) "Detention facility" means a physically restricting facility designed to prevent a youth from
29 departing at will. The term includes a youth detention facility, short-term detention center, and regional detention
30 facility.

1 ~~(16)~~(14) "Emergency placement" means placement of a youth in a youth care facility for less than 45
2 days to protect the youth when there is no alternative placement available.

3 ~~(17)~~(15) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom
4 a youth ordinarily lives.

5 ~~(18)~~(16) "Final disposition" means the implementation of a court order for the disposition or placement
6 of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, ~~and 41-5-1522,~~ through
7 41-5-1523, and 41-5-1525.

8 ~~(19)~~(17) "Foster home" means a private residence licensed by the department of public health and
9 human services for placement of a youth.

10 ~~(20)~~(18) "Guardian" means an adult:

11 (a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the
12 youth; and

13 (b) whose status is created and defined by law.

14 ~~(21)~~(19) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in
15 a semester or absences without prior written approval of a parent or a guardian.

16 ~~(22)~~(20) (a) "Holdover" means a room, office, building, or other place approved by the board of crime
17 control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not
18 to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate
19 detention or shelter care facility.

20 **(b)** The term does not include a jail.

21 ~~(23)~~(21) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal
22 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after
23 arrest, ~~but~~

24 **(b)** The term does not include a collocated juvenile detention facility that complies with 28 CFR, part
25 31.

26 ~~(24)~~(22) "Judge", when used without further qualification, means the judge of the youth court.

27 ~~(25)~~(23) "Juvenile home arrest officer" means ~~a court-appointed~~ an officer hired by the department
28 administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part
29 10.

30 ~~(26)~~(24) "Law enforcement records" means information or data, either in written or electronic form,

1 maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

2 ~~(27)~~(25) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction
3 that gives a person or agency the right and duty to:

4 (i) have physical custody of the youth or to determine physical custody;

5 (ii) determine with whom the youth shall live and for what period;

6 (iii) protect, train, and discipline the youth; and

7 (iv) provide the youth with food, shelter, education, and ordinary medical care.

8 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights and
9 duties as guardian unless otherwise authorized by the court entering the order.

10 ~~(28)~~(26) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

11 ~~(29)~~(27) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other
12 than a custodial parent's home, for purposes other than preadjudicatory or other detention.

13 (b) The term does not include shelter care or emergency placement of less than 45 days.

14 ~~(30)~~(28) "Parent" means the natural or adoptive parent but does not include a person whose parental
15 rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the
16 putative father's paternity is established by an adjudication or by other clear and convincing proof.

17 ~~(31)~~(29) "Probable cause hearing" means the hearing provided for in 41-5-332.

18 ~~(32)~~(30) "Regional detention facility" means a youth detention facility established and maintained by two
19 or more counties, as authorized in 41-5-1804.

20 ~~(33)~~(31) "Restitution" means payments in cash to the victim or with services to the victim or the general
21 community when these payments are made pursuant to a consent adjustment, consent decree, or other youth
22 court order.

23 ~~(34)~~(32) "Running away from home" means that a youth has been reported to have run away from home
24 without the consent of a parent or guardian or a custodian having legal custody of the youth.

25 ~~(35)~~(33) "Secure detention facility" means a public or private facility that:

26 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses
27 or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

28 (b) is designed to physically restrict the movements and activities of youth or other individuals held in
29 lawful custody of the facility.

30 ~~(36)~~(34) "Serious juvenile offender" means a youth who has committed an offense that would be

1 considered a felony offense if committed by an adult and that is an offense against a person, an offense against
2 property, or an offense involving dangerous drugs.

3 ~~(37)~~(35) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

4 ~~(38)~~(36) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to
5 the facilities enumerated in 41-5-347.

6 ~~(39)~~(37) "Short-term detention center" means a detention facility licensed by the department for the
7 temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal
8 holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility,
9 youth assessment center, or shelter care facility.

10 ~~(40)~~(38) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City
11 or the Riverside youth correctional facility in Boulder.

12 ~~(41)~~(39) "Substitute care" means full-time care of youth in a residential setting for the purpose of
13 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are
14 removed from or are without the care and supervision of their parents or guardians.

15 ~~(42)~~(40) "Victim" means:

16 (a) a person who suffers property, physical, or emotional injury as a result of an offense committed by
17 a youth that would be a criminal offense if committed by an adult;

18 (b) an adult relative of the victim, as defined in subsection ~~(42)(a)~~ (40)(a), if the victim is a minor; and

19 (c) an adult relative of a homicide victim.

20 ~~(43)~~(41) "Youth" means an individual who is less than 18 years of age without regard to sex or
21 emancipation.

22 ~~(44)~~(42) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

23 ~~(45)~~(43) "Youth assessment center" means a staff-secured location that is licensed by the department
24 of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate
25 and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing
26 the youth's behavior.

27 ~~(46)~~(44) "Youth care facility" has the meaning provided in 52-2-602.

28 ~~(47)~~(45) "Youth court" means the court established pursuant to this chapter to hear all proceedings in
29 which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court
30 judge, ~~probation officers, and assessment officers.~~

1 ~~(48)~~(46) (a) "Youth court records" means information or data, either in written or electronic form,
 2 maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of
 3 preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth
 4 assessment materials, and predispositional studies,~~and supervision records of probationers.~~

5 (b) Youth court records do not include information provided by the youth court to the department of
 6 public health and human services' management information system.

7 ~~(49)~~(47) "Youth detention facility" means a secure detention facility licensed by the department for the
 8 temporary substitute care of youth that is:

9 (a) (i) operated, administered, and staffed separately and independently of a jail; or

10 (ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

11 (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction
 12 for contempt of court, violation of a parole agreement, or violation of a valid court order.

13 ~~(50)~~(48) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

14 (a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal
 15 offense, including but not limited to a youth who:

16 ~~(a)~~(i) violates any Montana municipal or state law regarding alcoholic beverages; or

17 ~~(b)~~(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the
 18 control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's
 19 parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or
 20 control the youth's behavior; or

21 ~~(e)~~(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion,
 22 chooses to regard as a youth in need of intervention.

23 (49) "Youth probation and parole officer" means an officer employed by the department who provides
 24 supervision of youth:

25 (a) before or after adjudication; or

26 (b) before or after placement out of the youth's home."

27

28 **Section 6.** Section 41-5-105, MCA, is amended to read:

29 **"41-5-105. Youth court committee.** In every county of the state, the judge having jurisdiction may
 30 appoint a committee, willing to act without compensation, composed of not less than three or more than seven

1 reputable citizens, including youth representatives. The committee must be designated as a youth court
 2 committee. This committee shall meet subject to the call of the judge to confer with ~~him~~ the judge on all matters
 3 pertaining to the youth ~~department of the court, including the appointment of probation officers;~~ and shall act as
 4 a supervisory committee of youth detention facilities."

5
 6 **NEW SECTION. Section 7. Parental rights.** (1) The parents of a youth who is alleged to be a
 7 delinquent youth or a youth in need of intervention retain their parental authority except to the extent that the
 8 court expressly delegates authority to another person, entity, or agency. Delegations of authority under this
 9 chapter may not be any broader than necessary to advance the purposes of this chapter.

10 (2) Parents retain their parental authority unless:
 11 (a) the youth is committed to the department for placement in a state youth correctional facility;
 12 (b) a court, after hearing, has restricted parental authority and the court has made findings that:
 13 (i) an order to restrict parental authority is necessary to protect the youth from imminent threat of harm
 14 to self or others; and
 15 (ii) that no less restrictive measures will be effective; or
 16 (c) the parents or guardian of the youth has agreed to the restricted parental authority and has not
 17 revoked that agreement.

18
 19 **NEW SECTION. Section 8. Transportation costs.** The department is responsible for all costs of
 20 transportation of youth made necessary by this chapter, except that the county in which the youth is charged
 21 shall arrange for and pay for all costs of transportation of the youth prior to adjudication.

22
 23 **Section 9.** Section 41-5-201, MCA, is amended to read:

24 **"41-5-201. Youth court judge -- judges pro tempore -- special masters.** (1) Each judicial district in
 25 the state must have at least one judge of the youth court whose duties are to:

26 ~~(a) appoint and supervise qualified personnel to staff the youth division probation departments within~~
 27 ~~the judicial district;~~
 28 ~~(b)~~(a) conduct hearings on youth court proceedings under this chapter; and
 29 ~~(c)~~(b) perform any other functions consistent with the legislative purpose of this chapter.

30 (2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their

1 number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as
2 youth court judge may be rotated among the different judges of the judicial district and among the individual
3 counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court
4 judge and continuity in the operation and policies of the youth court in the county having the largest population
5 in the judicial district must be the principal consideration of the rule.

6 (3) (a) A youth court judge may appoint a judge pro tempore or a special master to conduct preliminary,
7 nondispositive matters, including but not limited to hearings for probable cause or detention and taking of
8 responses for petitions.

9 (b) A judge pro tempore or special master must be a member of the state bar of Montana."
10

11 **Section 10.** Section 41-5-203, MCA, is amended to read:

12 **"41-5-203. Jurisdiction of court.** (1) Except as provided in subsection (2) and for cases filed in the
13 district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under the Montana
14 Youth Court Act in which a youth is alleged to be a delinquent youth or a youth in need of intervention ~~or~~
15 ~~concerning any person under 21 years of age charged with having violated any law of the state or any ordinance~~
16 ~~of a city or town other than a traffic or fish and game law prior to having become 18 years of age~~ when the youth
17 is alleged to have committed the acts before the youth reached 18 years of age.

18 (2) Justices', municipal, and city courts have concurrent jurisdiction with the youth court over all
19 alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

20 (3) The court has jurisdiction to:

21 (a) transfer a youth court case to the district court after notice and hearing;

22 (b) with respect to extended jurisdiction juvenile cases:

23 (i) designate a proceeding as an extended jurisdiction juvenile prosecution;

24 (ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an extended
25 jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;

26 (iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's majority,
27 subject to the performance of the juvenile portion of the sentence;

28 (iv) continue, modify, or revoke the stay after notice and hearing;

29 (v) after revocation, transfer execution of the stayed sentence to the department;

30 (vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines by

1 a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion of an
 2 extended jurisdiction sentence; and
 3 (vii) transfer a juvenile case to district court after notice and hearing; and
 4 (c) impose criminal sanctions on a juvenile as authorized by the Extended Jurisdiction Prosecution Act,
 5 Title 41, chapter 5, part 16."
 6

7 **Section 11.** Section 41-5-215, MCA, is amended to read:

8 **"41-5-215. Youth court and department records -- notification of school.** (1) Reports of preliminary
 9 inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with
 10 the clerk of court are public records and are open to public inspection until the records are sealed under
 11 41-5-216.

12 (2) Social, medical, and psychological records, youth assessment materials, predispositional studies,
 13 and supervision records of probationers are open only to the following:

14 (a) the youth court and its professional staff;

15 (b) the department;

16 ~~(b)(c)~~ representatives of any agency providing supervision and having legal custody of a youth;

17 ~~(e)(d)~~ any other person, by order of the court, having a legitimate interest in the case or in the work of
 18 the court;

19 ~~(d)(e)~~ any other court and its ~~probation and other~~ professional staff or the attorney for a convicted party
 20 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the
 21 party;

22 ~~(e)(f)~~ the county attorney;

23 ~~(f)(g)~~ the youth who is the subject of the report or record, after emancipation or reaching the age of
 24 majority;

25 ~~(g)(h)~~ a member of a county interdisciplinary child information team formed under 52-2-211 who is not
 26 listed in this subsection (2);

27 ~~(h)(i)~~ members of a local interagency staffing group provided for in 52-2-203;

28 ~~(i)(j)~~ persons allowed access to the records referred to under 45-5-624(7); and

29 ~~(j)(k)~~ persons allowed access under 42-3-203.

30 (3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of

1 subsection (3)(b), the youth court shall notify the school district that the youth presently attends or the school
2 district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an
3 investigation has been completed:

4 (i) the youth has admitted the allegation or a petition has been filed with the youth court; and

5 (ii) a juvenile youth probation and parole officer has reason to believe that a youth is currently involved
6 with drug use or other criminal activity that has a bearing on the safety of children.

7 (b) Notification under subsection (3)(a) may not be given for status offenses.

8 (c) A school district may not refuse to accept the student if refusal violates the federal Individuals With
9 Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

10 (4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth,
11 as provided in 41-5-1416.

12 (5) The identity of a youth who for the second or subsequent time admits violating or is adjudicated as
13 having violated a statute must be disclosed by youth court officials to the administrative officials of the school
14 in which the youth is a student. The administrative officials may enforce school disciplinary procedures that
15 existed at the time of the admission or adjudication. The information may not be further disclosed and may not
16 be made part of the student's permanent records.

17 (6) The school district may disclose, without consent, personally identifiable information from an
18 education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the
19 Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving
20 the information shall certify in writing to the school district that the information will not be disclosed to any other
21 party except as provided under state law without the prior consent of the parent or guardian of the pupil.

22 (7) Any part of records information secured from records listed in subsection (2), when presented to and
23 used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties
24 to the proceedings."

25

26 **Section 12.** Section 41-5-321, MCA, is amended to read:

27 **"41-5-321. Taking into custody.** (1) A youth may be taken into custody under the following
28 circumstances:

29 (a) by a law enforcement officer pursuant to a lawful order or process of any court;

30 (b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

1 (c) by a juvenile home arrest officer or an officer listed in subsections (1)(a) and (1)(b) if a youth placed
2 under a home arrest program has violated a condition of the placement and the home arrest officer or law
3 enforcement officer has direct knowledge of the violation or a juvenile youth probation and parole officer has
4 provided the juvenile home arrest officer notice of a violation.

5 (2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity
6 of the taking under the constitution of Montana or the United States."
7

8 **Section 13.** Section 41-5-322, MCA, is amended to read:

9 **"41-5-322. Release from custody -- detention -- shelter care.** (1) Whenever a peace officer believes,
10 on reasonable grounds, that a youth can be released to a responsible person, the peace officer may release the
11 youth to that person upon receiving a written promise from the person to bring the youth before the youth
12 probation and parole officer at a time and place specified in the written promise, or a peace officer may release
13 the youth under any other reasonable circumstances.

14 (2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the
15 peace officer shall notify the youth probation and parole officer immediately and shall, as soon as practicable,
16 provide the youth probation and parole officer with a written report of the peace officer's reasons for holding the
17 youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth
18 must be held in a place of detention, as provided in 41-5-348, that is approved by the youth court.

19 (3) If the peace officer believes that the youth must be sheltered, the peace officer shall notify the youth
20 probation and parole officer immediately and shall provide a written report of the peace officer's reasons for
21 placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility
22 approved by the youth court."
23

24 **Section 14.** Section 41-5-331, MCA, is amended to read:

25 **"41-5-331. Rights of youth taken into custody -- questioning -- waiver of rights.** (1) When a youth
26 is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either
27 a delinquent youth or a youth in need of intervention, the following requirements must be met:

28 (a) The youth must be advised of the youth's right against self-incrimination and the youth's right to
29 counsel.

30 (b) The investigating officer, youth probation and parole officer, or person assigned to give notice shall

1 immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into
 2 custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents,
 3 guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the
 4 youth must be notified.

5 (2) A youth may waive the rights listed in subsection (1) under the following situations:

6 (a) when the youth is 16 years of age or older, the youth may make an effective waiver;

7 (b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree,
 8 they may make an effective waiver; or

9 (c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not
 10 agree, the youth may make an effective waiver only with advice of counsel."

11

12 **Section 15.** Section 41-5-343, MCA, is amended to read:

13 **"41-5-343. Criteria for placement of youth in youth assessment centers.** A youth may be placed
 14 in a youth assessment center only if:

15 (1) the youth meets the requirements for placement in shelter care;

16 (2) the youth has not committed an act that would be a felony offense if committed by an adult;

17 (3) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's need
 18 for services;

19 (4) the youth needs to be held accountable for the youth's actions with structured programming; and

20 (5) the youth meets qualifications as outlined by the placement guidelines that are determined by the
 21 department ~~and coordinated with the guidelines used by the youth placement committees."~~

22

23 **Section 16.** Section 41-5-355, MCA, is amended to read:

24 **"41-5-355. Excessive juvenile population -- confinement of juveniles in alternate placements.** (1)

25 The department shall determine the capacity for state youth correctional facilities. The department shall notify
 26 all district courts, sheriffs, and youth courts of the capacity for each state youth correctional facility by sending
 27 a report to each annually.

28 (2) If the population of a state youth correctional facility exceeds the capacity established by the
 29 department, the director of the department may declare that the capacity has been exceeded and temporarily
 30 stop admissions to the facility. The director shall notify each district court, sheriff, and youth court that delinquent

1 or criminally convicted youth will not be accepted by the department for admission into the facility until the
2 population is reduced to less than the capacity determined by the department in subsection (1).

3 (3) If the director of the department declares that the capacity has been exceeded, the department shall
4 place delinquent youth committed to a state youth correctional facility or criminally convicted youth in alternate
5 placements based on the needs of the delinquent youth or criminally convicted youth. If a youth is denied
6 placement in a state youth correctional facility under this section, the department shall inform ~~and seek approval~~
7 ~~of~~ the district court of the intended alternative placement prior to placing the youth.

8 (4) The department may enter into contracts with the federal government, other states, local
9 governments, public or private corporations, and other entities that have suitable facilities for confining
10 delinquent youth or criminally convicted youth committed to the department, either because a state youth
11 correctional facility has exceeded its capacity or because the department ~~has no~~ does not have a youth
12 correctional facility that is adequate for certain delinquent youth or criminally convicted youth."
13

14 **Section 17.** Section 41-5-1201, MCA, is amended to read:

15 **"41-5-1201. Preliminary inquiry -- referral of youth in need of care.** (1) Whenever the court receives
16 information from an agency or person, including a parent or guardian of a youth, based upon reasonable
17 grounds, that a youth is or appears to be a delinquent youth or a youth in need of intervention or that the youth
18 is subject to a court order or consent order and has violated the terms of an order, a youth probation and parole
19 officer or an assessment officer shall make a preliminary inquiry into the matter.

20 (2) If the youth probation and parole officer or assessment officer determines that the facts indicate that
21 the youth is a youth in need of care, as defined in 41-3-102, the matter must be immediately referred to the
22 department of public health and human services."
23

24 **Section 18.** Section 41-5-1202, MCA, is amended to read:

25 **"41-5-1202. Preliminary inquiry -- procedure -- youth assessment.** (1) In conducting a preliminary
26 inquiry under 41-5-1201, the youth probation and parole officer or assessment officer shall:

27 (a) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana
28 and the United States;

29 (b) determine whether the matter is within the jurisdiction of the court;

30 (c) determine, if the youth is in detention, a youth assessment center, or shelter care, whether detention,

1 placement in a youth assessment center, or shelter care should be continued or modified based upon criteria
2 set forth in 41-5-341 through 41-5-343.

3 (2) In conducting a preliminary inquiry, the youth probation and parole officer or assessment officer may:

4 (a) require the presence of any person relevant to the inquiry;

5 (b) request subpoenas from the judge to accomplish this purpose;

6 (c) require investigation of the matter by any law enforcement agency or any other appropriate state
7 or local agency;

8 (d) perform a youth assessment pursuant to 41-5-1203."
9

10 **Section 19.** Section 41-5-1203, MCA, is amended to read:

11 **"41-5-1203. Preliminary inquiry -- youth assessment.** (1) The youth probation and parole officer or
12 assessment officer may perform a youth assessment if:

13 (a) a youth has been referred to the youth court as an alleged youth in need of intervention with a
14 minimum of two misdemeanor offenses or three offenses in the past year that would not be offenses if the youth
15 were an adult;

16 (b) the youth is alleged to be a youth in need of intervention or a delinquent youth and the youth or the
17 youth's parents or guardian requests the youth assessment and both the youth and the parents or guardian are
18 willing to cooperate with the assessment process; or

19 (c) the circumstances surrounding a youth who has committed an act that would be a felony if
20 committed by an adult indicate the need for a youth assessment and the safety of the community has been
21 considered in determining where the youth assessment is conducted.

22 (2) A youth assessment:

23 (a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency
24 evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has
25 mental health needs, or an assessment of the need for any family-based services or other services provided by
26 the department of public health and human services or other state and local agencies. The education component
27 of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The
28 education component is not intended to interfere with the right to attend a nonpublic or home school that
29 complies with 20-5-109.

30 (b) must include a summary of the family's strengths and needs as they relate to addressing the youth's

1 behavior;

2 (c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-343 in a
3 youth assessment center licensed by the department of public health and human services or in any other entity
4 licensed by the department of public health and human services. The county shall provide adequate security
5 in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the
6 county must meet licensing requirements applicable to the licensed entity in which the youth is being held.

7 (3) The assessment officer arranging the youth assessment shall work with the parent or guardian of
8 the youth to coordinate the performance of the various parts of the assessment with any providers that may
9 already be working with the family or providers that are chosen by the family to the extent possible to meet the
10 goals of the Youth Court Act."

11

12 **Section 20.** Section 41-5-1204, MCA, is amended to read:

13 **"41-5-1204. Preliminary inquiry -- determinations -- release.** Once relevant information is secured
14 after a preliminary inquiry under 41-5-1201, the youth probation and parole officer or assessment officer shall:

- 15 (1) determine whether the interest of the public or the youth requires that further action be taken;
16 (2) terminate the inquiry upon the determination that no further action be taken; and
17 (3) release the youth immediately upon the determination that the filing of a petition is not authorized."

18

19 **Section 21.** Section 41-5-1205, MCA, is amended to read:

20 **"41-5-1205. Preliminary inquiry -- dispositions available to youth probation and parole officer.**

21 Upon determining that further action is required after a preliminary inquiry under 41-5-1201, the youth probation
22 and parole officer or assessment officer may:

- 23 (1) arrange informal disposition as provided in 41-5-1301; or
24 (2) refer the matter to the county attorney for filing a petition in youth court charging the youth to be a
25 delinquent youth or a youth in need of intervention or for filing an information in the district court as provided in
26 41-5-206."

27

28 **Section 22.** Section 41-5-1210, MCA, is amended to read:

29 **"41-5-1210. Information to be collected by juvenile youth probation and parole officer or
30 assessment officer. The juvenile youth probation and parole officer or assessment officer shall collect the**

1 following information regarding a youth:

- 2 (1) biographical data;
- 3 (2) a description of prior and current offenses, including criminal history;
- 4 (3) a listing of known or suspected associates;
- 5 (4) any gang or drug involvement;
- 6 (5) field investigation data;
- 7 (6) motor vehicle ownership and offense data, if any;
- 8 (7) whether the youth is a suspect in other criminal investigations;
- 9 (8) history of any victimization of others by the youth;
- 10 (9) the youth's status offense history;
- 11 (10) existence of active warrants;
- 12 (11) school, employment, and family histories;
- 13 (12) social and medical services histories; and
- 14 (13) prior conduct in a youth detention or correctional facility, if any."

15

16 **Section 23.** Section 41-5-1301, MCA, is amended to read:

17 **"41-5-1301. Informal disposition.** After a preliminary inquiry under 41-5-1201, the youth probation and parole
18 officer or assessment officer upon determining that further action is required and that referral to the county
19 attorney is not required may:

20 (1) provide counseling, refer the youth and the youth's family to another agency providing appropriate
21 services, or take any other action or make any informal adjustment that does not involve probation or detention;
22 or

23 (2) provide for treatment or adjustment involving probation or other disposition authorized under
24 41-5-1302 through 41-5-1304 if the treatment or adjustment is voluntarily accepted by the youth's parents or
25 guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the youth
26 probation and parole officer or assessment officer proceeds no further unless authorized by the county attorney."

27

28 **Section 24.** Section 41-5-1302, MCA, is amended to read:

29 **"41-5-1302. Consent adjustment without petition.** (1) Before referring the matter to the county
30 attorney and subject to the limitations in subsection (3), the youth probation and parole officer or assessment

1 officer may enter into a consent adjustment and give counsel and advice to the youth, the youth's family, and
2 other interested parties if it appears that:

3 (a) the admitted facts bring the case within the jurisdiction of the court;

4 (b) counsel and advice without filing a petition would be in the best interests of the child, the family, and
5 the public; and

6 (c) the youth may be a youth in need of intervention and the youth probation and parole officer or
7 assessment officer believes that the parents, foster parents, physical custodian, or guardian exerted all
8 reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior
9 beyond the control of the parents, foster parents, physical custodian, or guardian.

10 (2) Any probation or other disposition imposed under this section against a youth must conform to the
11 following procedures:

12 (a) Every consent adjustment must be reduced to writing and signed by the youth and the youth's
13 parents or the person having legal custody of the youth.

14 (b) If the youth probation and parole officer or assessment officer believes that the youth is a youth in
15 need of intervention, the youth probation and parole officer or assessment officer shall determine that the
16 parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or
17 control the youth's behavior and that the youth continues to exhibit behavior beyond the control of the parents,
18 foster parents, physical custodian, or guardian.

19 (c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if
20 the youth has been or will be in any way detained.

21 (3) A consent adjustment without petition under this section may not be used to dispose of a youth's
22 alleged second or subsequent offense if:

23 (a) the youth has admitted commission of or has been adjudicated or sentenced for a prior offense that
24 would be a felony if committed by an adult;

25 (b) the second or subsequent offense would be a felony if committed by an adult and was committed
26 within 3 years of a prior offense; or

27 (c) the second or subsequent offense would be a misdemeanor if committed by an adult and was
28 committed within 3 years of a prior offense, other than a felony, unless the youth probation and parole officer
29 notifies the youth court and obtains written approval from the county attorney and the youth court judge.

30 (4) For purposes of subsection (3), related offenses committed by a youth during the same 24-hour

1 period must be considered a single offense."

2

3 **Section 25.** Section 41-5-1304, MCA, is amended to read:

4 **"41-5-1304. Disposition permitted under consent adjustment.** (1) The following dispositions may
5 be imposed by consent adjustment if the youth and the youth's parents or guardian agree:

6 (a) probation;

7 (b) placement of the youth in substitute care in a youth care facility, as defined in 52-2-602 ~~and pursuant~~
8 ~~to a recommendation made under 41-5-124,~~ if the placement is in the least restrictive environment to meet the
9 purposes of this chapter;

10 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth
11 ~~pursuant to a recommendation made under 41-5-124;~~

12 (d) restitution, as provided in 41-5-1521, upon approval of the youth court judge;

13 ~~—(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;~~

14 ~~(f)~~(e) confiscation of the youth's driver's license, if the youth has one, by the youth probation and parole
15 officer for a specified period of time, not to exceed 90 days. The youth probation and parole officer shall notify
16 the department of justice of the confiscation and its duration. The department of justice may not enter the
17 confiscation on the youth's driving record. The youth probation and parole officer shall notify the department of
18 justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be
19 confiscated under this subsection more than once. The youth probation and parole officer may, in the youth
20 probation and parole officer's discretion and with the concurrence of a parent or guardian, return a youth's
21 confiscated driver's license before the termination of the time period for which it had been confiscated. The
22 confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be
23 paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be
24 used as grounds for denying coverage for an accident or other occurrence under an existing policy;

25 ~~(g)~~(f) a requirement that the youth receive counseling services;

26 ~~—(h) placement in a youth assessment center for up to 10 days;~~

27 ~~—(i) placement of the youth in detention for up to 3 days on a space-available basis at the county's~~
28 ~~expense, which is not reimbursable under part 19 of this chapter;~~

29 ~~(j)~~(g) a requirement that the youth perform community service;

30 ~~(k)~~(h) a requirement that the youth participate in victim-offender mediation;

1 ~~(h)~~(i) an agreement that the youth pay a contribution covering all or a part of the costs for the
2 adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention,
3 supervision, care, custody, and treatment of the youth, including the costs of counseling;

4 ~~(m)~~(j) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's
5 counseling or restitution for damages that result from the offense for which the youth is disposed;

6 ~~(n)~~(k) any other condition ordered by the ~~court~~ youth probation and parole officer to accomplish the
7 goals of the consent adjustment, including but not limited to mediation or youth assessment. Before ordering
8 youth assessment, the ~~court~~ youth probation and parole officer shall provide the family an estimate of the cost
9 of youth assessment, and the ~~court~~ youth probation and parole officer shall take into consideration the financial
10 resources of the family before ordering parental or guardian contribution for the costs of youth assessment.

11 ~~(2) If the youth violates a parole agreement as provided for in 52-5-126, the youth must be returned to~~
12 ~~the court for further disposition.~~ A youth may not be placed in a state youth correctional facility under consent
13 adjustment.

14 (3) If the youth is placed in substitute care, ~~an assessment placement, or detention~~ requiring payment
15 by any state department or local government agency, the ~~court~~ department shall examine the financial ability
16 of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication,
17 disposition, supervision, care, placement, and treatment of the youth, including the costs of necessary medical,
18 dental, and other health care."

19

20 **Section 26.** Section 41-5-1401, MCA, is amended to read:

21 **"41-5-1401. Petition -- county attorney -- procedure -- release from custody.** (1) The county attorney
22 may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth
23 in need of intervention. The application must be supported by evidence that the youth court may require. If it
24 appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall
25 grant leave to file the petition.

26 (2) A petition charging a youth who is held in detention or a youth assessment center must be filed
27 within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and
28 the youth released unless good cause is shown to further detain the youth.

29 (3) If a petition is not filed under this section, the complainant and victim, if any, must be informed by
30 the youth probation and parole officer or assessment officer of the action and the reasons for not filing and must

1 be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving
2 a request for review, shall consider the facts, consult with the youth probation and parole officer or assessment
3 officer, and make the final decision as to whether a petition is filed."

4

5 **Section 27.** Section 41-5-1432, MCA, is amended to read:

6 **"41-5-1432. Enforcement of restitution orders.** If the court orders payment of restitution and the youth
7 fails to pay the restitution in accordance with the payment schedule or structure established by the court or youth
8 probation and parole officer, the youth's probation and parole officer may, on the officer's own motion or at the
9 request of the victim, file a petition for violation of probation or ask the court to hold a hearing to determine
10 whether the conditions of probation should be changed. The youth probation and parole officer shall ask for a
11 hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The court shall
12 schedule and hold the hearing before the youth's term of probation expires."

13

14 **Section 28.** Section 41-5-1501, MCA, is amended to read:

15 **"41-5-1501. Consent decree with petition.** (1) (a) Subject to the provisions of subsection (2), after the
16 filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for
17 the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision
18 under terms and conditions negotiated with probation services and agreed to by all necessary parties, including
19 the youth and the youth's custodial parents or guardian. The court's order continuing the youth under supervision
20 under this section is known as a "consent decree". In addition to the dispositions permitted under 41-5-1304,
21 a consent decree may provide for placement of the youth under home arrest as provided in Title 46, chapter 18,
22 part 10, placement in a youth assessment center for up to 10 days, or placement in detention for up to 3 days
23 on a space-available basis at a county's expense, which is not reimbursable under part 19 of this chapter. Except
24 as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must
25 conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent
26 adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for
27 the costs of placement in substitute care.

28 (b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's
29 expense, which is not reimbursable under part 19 of this chapter.

30 (2) A consent decree under this section may not be used by the court unless the youth admits guilt for

1 a charge of an offense set forth in the petition and accepts responsibility for the youth's actions.

2 (3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to findings,
3 adjudication, and disposition of the case.

4 (4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition
5 alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the
6 youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth
7 was continued under supervision may be reinstated in the discretion of the county attorney in consultation with
8 probation services. In the event of reinstatement, the proceeding on the petition must be continued to conclusion
9 as if the consent decree had never been entered.

10 (5) A youth who is discharged by probation services or who completes a period under supervision
11 without reinstatement of the original petition may not again be proceeded against in any court for the same
12 offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does
13 not preclude a civil suit against the youth for damages arising from the youth's conduct.

14 (6) If the terms of the consent decree extend for a period in excess of 6 months, the youth probation
15 and parole officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

16 (7) A consent decree with petition under this section may not be used to dispose of a youth's alleged
17 second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent
18 offense if that offense would be a misdemeanor if committed by an adult unless it is recommended by the county
19 attorney and accepted by the youth court judge."
20

21 **Section 29.** Section 41-5-1503, MCA, is amended to read:

22 **"41-5-1503. Medical or psychological evaluation of youth -- urinalysis.** (1) The youth court may
23 order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth
24 waives the youth's constitutional rights in the manner provided for in 41-5-331. The county determined by the
25 court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection
26 (2). A county may contract with the department or other public or private agencies to obtain evaluation services
27 ordered by the court.

28 (2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the
29 cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order
30 the youth's parents or guardians to pay all or part of the cost of the evaluation.

1 (3) Subject to 41-5-1512~~(4)(e)(i)(1)(m)(i)~~, the youth court may not order an evaluation or placement of
2 a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to
3 have committed an offense that is listed under 41-5-206.

4 (4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is
5 transferred to the district court under 41-5-208 or 41-5-1605 or the jurisdiction of the youth court is terminated
6 following the filing of an information in district court pursuant to 41-5-206.

7 (5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use
8 of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining
9 whether the youth is using alcoholic beverages or illegal drugs."
10

11 **Section 30.** Section 41-5-1504, MCA, is amended to read:

12 **"41-5-1504. Finding of suffering from mental disorder and meeting other criteria -- rights --**
13 **limitation on placement.** (1) A youth who is found to be suffering from a mental disorder, as defined in
14 53-21-102, and who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through
15 53-21-119.

16 (2) A youth who, prior to placement or sentencing, is found to be suffering from a mental disorder, as
17 defined in 53-21-102, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a state
18 youth correctional facility and must be committed to the department of public health and human services for
19 appropriate mental health placement.

20 (3) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets
21 the criteria in 53-21-126(1) after placement in or sentencing to a state youth correctional facility must be moved
22 to a more appropriate placement in response to the youth's mental health needs and consistent with the
23 disposition alternatives available in 53-21-127."
24

25 **Section 31.** Section 41-5-1511, MCA, is amended to read:

26 **"41-5-1511. Dispositional hearing -- contributions by parents or guardians for expenses.** (1) As
27 soon as practicable after a youth is found to be a delinquent youth or a youth in need of intervention, the court
28 shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial
29 ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication, disposition,
30 supervision, care, commitment, and treatment of the youth as required in 41-5-1525, including the costs of

1 necessary medical, dental, and other health care.

2 (2) Before conducting the dispositional hearing, the court shall direct that a youth assessment or
 3 predisposition report be made in writing by a youth probation and parole officer or an assessment officer
 4 concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care
 5 or rehabilitation or disposition of the case, including a statement by the victim or the victim's family. The youth
 6 court may have the youth examined, and the results of the examination must be made available to the court as
 7 part of the youth assessment or predisposition report. The court may order the examination of a parent or
 8 guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination
 9 must be included in the youth assessment or predisposition report. The youth or the youth's parents, guardian,
 10 or counsel has the right to subpoena all persons who have prepared any portion of the youth assessment or
 11 predisposition report and has the right to cross-examine the parties at the dispositional hearing.

12 (3) Defense counsel must be furnished with a copy of the youth assessment or predisposition report
 13 and psychological report prior to the dispositional hearing.

14 (4) The dispositional hearing must be conducted in the manner set forth in 41-5-1502(5) through (7).
 15 The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the
 16 youth, the victim, and the public. The evidence must include but is not limited to the youth assessment and
 17 predisposition report provided for in subsection (2) of this section.

18 (5) If the court finds that it is in the best interest of the youth, the youth, the youth's parents or guardian,
 19 or the public may be temporarily excluded from the hearing during the taking of evidence on the issues of need
 20 for treatment and rehabilitation."

21
 22 **Section 32.** Section 41-5-1512, MCA, is amended to read:

23 **"41-5-1512. Disposition of youth in need of intervention or youth who violate consent**
 24 **adjustments.** (1) If a youth is found to be a youth in need of intervention or to have violated a consent
 25 adjustment, the youth court may enter its judgment making one or more of the following dispositions:

26 ~~(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this~~
 27 ~~subsection.~~

28 ~~—— (b) place the youth in a residence that ensures that the youth is accountable, that provides for~~
 29 ~~rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider~~
 30 ~~placement recommendations from the youth placement committee.~~

1 ~~_____ (c) commit the youth to the department in jurisdictions that do not participate in the juvenile delinquency~~
 2 ~~intervention program or to the youth court in jurisdictions that participate in the juvenile delinquency intervention~~
 3 ~~program for the purposes of funding a private, out-of-home, residential placement subject to the conditions in~~
 4 ~~41-5-1522. In an order committing a youth to the department or to the youth court, the court shall determine~~
 5 ~~whether continuation in the youth's own home would be contrary to the welfare of the youth and whether~~
 6 ~~reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's~~
 7 ~~home.~~

8 (a) place the youth with the department for probation supervision in the youth's home or in a suitable
 9 out-of-home placement, subject to the restrictions and limitations of this chapter;

10 ~~(d)(b)~~ order restitution for damages that result from the offense for which the youth is disposed by the
 11 youth or by the person that contributed to the delinquency of the youth;

12 ~~(e)(c)~~ require the performance of community service;

13 ~~(f)(d)~~ require the youth, the youth's parents or guardians, or the persons having legal custody of the
 14 youth to receive counseling services;

15 ~~(g)(e)~~ require the medical and psychological evaluation of the youth, the youth's parents or guardians,
 16 or the persons having legal custody of the youth;

17 ~~(h)(f)~~ require the parents, guardians, or other persons having legal custody of the youth to furnish
 18 services the court may designate;

19 ~~(i)(g)~~ order further care, treatment, evaluation, or relief that the court considers beneficial to the youth
 20 and the community;

21 ~~(j)(h)~~ subject to the provisions of 41-5-1504, commit the youth to ~~a~~ an appropriate mental health facility
 22 if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is
 23 found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

24 ~~(k)(i)~~ place the youth under home arrest as provided in Title 46, chapter 18, part 10;

25 ~~(l)(j)~~ order confiscation of the youth's driver's license, if the youth has one, by the youth probation and
 26 parole officer for a specified period of time, not to exceed 90 days. The youth probation and parole officer shall
 27 notify the department of justice of the confiscation and its duration. The department of justice may not enter the
 28 confiscation on the youth's driving record. The youth probation and parole officer shall notify the department of
 29 justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be
 30 confiscated under this subsection more than once. The youth probation and parole officer may, in the youth

1 probation and parole officer's discretion and with the concurrence of a parent or guardian, return a youth's
 2 confiscated driver's license before the termination of the time period for which it had been confiscated. The
 3 confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be
 4 paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be
 5 used as grounds for denying coverage for an accident or other occurrence under an existing policy.

6 ~~(m)~~(k) order the youth to pay a contribution covering all or a part of the costs for the adjudication,
 7 disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision,
 8 care, custody, and treatment of the youth, including the costs of counseling;

9 ~~(n)~~(l) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

10 ~~(o)~~(m) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program
 11 or facility with the following conditions:

12 (i) The court may not order placement for evaluation under this section at a youth correctional facility
 13 ~~of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth~~
 14 ~~who has violated a consent adjustment.~~

15 ~~(ii) The placement for evaluation must be on a space-available basis at the county's expense, which is~~
 16 ~~not reimbursable under part 19 of this chapter.~~

17 ~~(iii)~~(ii) The court may require the youth's parents or guardians to pay a contribution covering all or a part
 18 of the costs of the evaluation if the court determines after an examination of financial ability that the parents or
 19 guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial
 20 responsibility of the judicial district of the court that ordered the evaluation.

21 ~~(p)~~(n) order placement of a youth in a youth assessment center for up to 10 days;

22 ~~(q)~~(o) order the youth to participate in mediation that is appropriate for the offense committed.

23 (2) The court may not order a local government entity to pay for care, treatment, intervention, or
 24 placement under this part. A court may order a local government entity to pay for evaluation under this part and
 25 in-state transportation ~~of a youth~~ for the evaluation.

26 (3) The court may not order ~~a state government entity~~ the department to pay for care, treatment,
 27 intervention, placement, or evaluation that results in a deficit ~~in the account established for that district under~~
 28 ~~41-5-130 without approval from the cost containment review panel~~ to the department's youth placement funds.

29 (4) In an order committing a youth to the department under subsection (1)(a), the court shall retain
 30 jurisdiction and shall determine whether continuation in the youth's own home would be contrary to the welfare

1 of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of
 2 the youth from the youth's home."

3

4 **Section 33.** Section 41-5-1513, MCA, is amended to read:

5 **"41-5-1513. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found to be a delinquent
 6 youth, the youth court may enter its judgment making one or more of the following dispositions:

7 (a) any one or more of the dispositions provided in 41-5-1512;

8 (b) subject to 41-5-1504, ~~41-5-1512(1)(e)(i)~~, and 41-5-1522, commit the youth to the department for
 9 placement in a state youth correctional facility and recommend to the department that the youth not be released
 10 until the youth reaches 18 years of age. The court may not place a youth adjudicated delinquent in a state youth
 11 correctional facility for an offense that would be a misdemeanor if committed by an adult unless the court finds
 12 that the youth presents a danger to the public safety and that the placement is recommended by a mental health
 13 professional after evaluation of the youth. The provisions of 41-5-355 relating to alternative placements apply
 14 to placements under this subsection (1)(b).

15 (c) require a youth found to be a delinquent youth, as the result of the commission of an offense that
 16 would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as
 17 a sexual or violent offender pursuant to Title 46, chapter 23, part 5. ~~The youth court shall retain jurisdiction in~~
 18 ~~a disposition under this subsection.~~

19 (d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender,
 20 the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of
 21 subsection ~~(2)~~ (3), if the judge finds that the placement is necessary for the protection of the public. The court
 22 may order the department to notify the court within 5 working days before the proposed release of a youth from
 23 a youth correctional facility. Once a youth is committed to the department for placement ~~in a state youth~~
 24 ~~correctional facility~~, the department is responsible for determining an appropriate date of release or an alternative
 25 placement until the youth is discharged from the youth services division.

26 (e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if
 27 committed by an adult.

28 (2) If the court defers imposition of sentence under 41-5-1512(1)(m)(i) for a placement evaluation, the
 29 court may order the evaluation of a youth adjudicated delinquent to be conducted at a youth correctional facility
 30 if space is available.

1 ~~(2)~~(3) If a youth has been adjudicated for a felony sex offense, the youth court may require completion
2 of sex offender treatment ~~before a youth is discharged.~~

3 ~~(3)~~(4) The court may not order a local government entity to pay for care, treatment, intervention, or
4 placement under this part. A court may order a local government entity to pay for evaluation under this part and
5 in-state transportation ~~of a youth for the evaluation.~~

6 ~~(4)~~(5) The court may not order ~~a state government entity~~ the department to pay for care, treatment,
7 intervention, placement, or evaluation that results in a deficit in ~~the account established for that district under~~
8 ~~41-5-130 without approval from the cost containment review panel~~ for the department's youth placement funds."

9

10 **Section 34.** Section 41-5-1522, MCA, is amended to read:

11 "**41-5-1522. ~~Commitment to department -- restrictions~~ Delinquent youth -- restrictions on**
12 **placement.** When a youth is adjudicated a delinquent youth under 41-5-1513 and is committed to the
13 department, the department shall determine the appropriate placement and rehabilitation program for the youth
14 ~~after considering the recommendations made under 41-5-123 by the youth placement committee.~~ Placement
15 is subject to the following limitations:

16 (1) A youth may not be held in a state youth correctional facility for a period of time in excess of the
17 maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that
18 brought the youth under the jurisdiction of the youth court. This section does not limit the power of the
19 department to enter into a parole agreement with the youth pursuant to 52-5-126.

20 (2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used
21 for the execution of sentences of adults convicted of crimes, except as provided in 41-5-206.

22 ~~(3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for~~
23 ~~commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent~~
24 ~~adjustment in a state youth correctional facility."~~

25

26 **Section 35.** Section 41-5-1523, MCA, is amended to read:

27 "**41-5-1523. ~~Commitment to department -- supervision~~ Probation -- supervision.** (1) A youth placed
28 in a state youth correctional facility or other facility or program operated by the department or who signs a parole
29 agreement under 52-5-126 must be supervised by the department.

30 ~~(2)~~(1) A youth who is placed in any private, out-of-home, residential placement by the youth court or the

1 ~~youth court's juvenile~~ youth probation and parole officer must be supervised by the youth probation and parole
2 officer of the youth court having jurisdiction over the youth under 41-5-205, whether or not the youth is committed
3 to the department for purposes of funding a private, out-of-home, residential placement. Supervision by the youth
4 probation and parole officer includes but is not limited to:

5 (a) submitting information and documentation necessary for the person, ~~committee, or team that is~~
6 making the placement recommendation to determine an appropriate placement for the youth;

7 (b) securing approval for payment of special education costs from the youth's school district of residence
8 or the office of public instruction, as required in Title 20, chapter 7, part 4;

9 (c) submitting an application to a facility in which the youth may be placed; and

10 (d) case management of the youth while in a private, out-of-home, residential placement and upon
11 release until discharged by the department.

12 (2) When a youth is placed in or moved to another out-of-home placement, the department shall notify
13 the youth's parent or guardian as soon as possible.

14 (3) When a youth is in an out-of-home placement, the youth's parent or guardian must be notified as
15 soon as practicable of nonroutine medical procedures and of medications that are prescribed or of any change
16 in medication."

17

18 **Section 36.** Section 41-5-1605, MCA, is amended to read:

19 **"41-5-1605. Revocation of stay -- disposition.** (1) If a court has imposed on a youth a sentence
20 stayed under 41-5-1604(1)(a)(ii) and the youth violates the conditions of the stay or is alleged to have committed
21 a new offense, the court may, without notice, direct that the youth be taken into immediate custody. The court
22 shall notify the youth, the youth's counsel, and the youth's parents, guardian, or custodian in writing of the
23 reasons alleged to exist for revocation of the stay of execution of the sentence.

24 (2) (a) The court shall hold a revocation hearing at which the youth is entitled to receive:

25 (i) written notice of the alleged violation;

26 (ii) evidence of the alleged violation;

27 (iii) an opportunity to be heard in person and to present witnesses and evidence;

28 (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing
29 confrontation; and

30 (v) the right to counsel.

1 (b) After the revocation hearing, if the court finds by a preponderance of the evidence presented that
 2 the conditions of the stay have been violated or that the youth has committed a new offense, the court shall
 3 provide the youth with a written statement of the evidence relied on and reasons for revocation and shall:

4 (i) continue the stay and place the youth on probation;

5 (ii) impose one or more dispositions under 41-5-1512 or 41-5-1513 if the youth is under 18 years of age;

6 or

7 (iii) subject to 41-5-206(6) and (7) and 41-5-1604(1)(b), order execution of the sentence imposed under
 8 41-5-1604(1)(a)(ii). The court shall order credit for any time served prior to revocation under a disposition under
 9 41-5-1604(1)(a)(i).

10 (3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the case
 11 to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated and youth
 12 court jurisdiction is terminated. Ongoing supervision of the offender is with the ~~department, rather than the youth~~
 13 ~~court's juvenile probation services~~ department's adult probation and parole bureau."

14
 15 **Section 37.** Section 41-5-1701, MCA, is amended to read:

16 **"41-5-1701. ~~Appointment of juvenile probation officers~~ Juvenile services division staff -- hiring**
 17 **-- quasi-judicial functions.** (1) ~~The youth court judge of each judicial district shall appoint probation officers,~~
 18 ~~deputy probation officers, and part-time probation officers necessary to administer this chapter. The~~
 19 ~~qualifications for part-time probation officers must approximate those required for probation officers insofar as~~
 20 ~~possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the~~
 21 ~~judicial district. The judge shall also ensure that the youth division offices are staffed with necessary office~~
 22 ~~personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this~~
 23 ~~chapter. The department shall hire youth probation and parole officers, youth services division staff, and~~
 24 ~~assessment officers necessary to administer this chapter. A person while serving as a law enforcement officer~~
 25 ~~may not be appointed or perform the duties of a full-time or part-time youth probation and parole officer.~~

26 (2) All youth probation and parole officers and youth division office staff hired ~~or appointed~~ under
 27 subsection (1) are employees of the ~~judicial branch of state government~~ department. The employees are subject
 28 to classification and compensation as determined by the ~~judicial branch~~ state personnel classification plan
 29 ~~adopted by the supreme court under 3-1-130~~ and must receive state employee benefits and expenses as
 30 provided in Title 2, chapter 18.

- 1 (3) Youth probation and parole officers may enter into binding:
 2 (a) informal dispositions under 41-5-1301;
 3 (b) consent adjustments, without petition, under 41-5-1302; and
 4 (c) consent decrees, with petition, under 41-5-1501."

- 5
 6 **Section 38.** Section 41-5-2503, MCA, is amended to read:
 7 **"41-5-2503. Disposition of criminally convicted youth.** (1) The district court, in sentencing a youth
 8 adjudicated in district court pursuant to 41-5-206, shall:
 9 (a) impose any sentence allowed by the statute that established the penalty for the offense of which the
 10 youth is convicted as if the youth were an adult and any conditions or restrictions allowed by statute;
 11 (b) retain jurisdiction over the case until the criminally convicted youth reaches the age of 21;
 12 (c) order the department to submit a status report to the court, county attorney, and defense attorney;
 13 ~~and juvenile probation officer~~ every 6 months until the youth attains the age of 21. Monitoring of the youth is the
 14 responsibility of the department's juvenile services division until the youth reaches 18 years of age, at which time
 15 the adult probation and parole bureau shall assume responsibility for supervision. The report must include a
 16 recommendation from the department regarding the disposition of the criminally convicted youth.
 17 (2) The district court shall review the criminally convicted youth's sentence pursuant to 41-5-2510 before
 18 the youth reaches the age of 21 if a hearing has not been requested under 41-5-2510."

- 19
 20 **Section 39.** Section 44-4-304, MCA, is amended to read:
 21 **"44-4-304. (Temporary) Board to conduct study.** The board of crime control shall:
 22 (1) appoint ~~a nine-member~~ an eight-member study task force that is composed of:
 23 (a) two members of the board of crime control, one of whom must be designated by the board's
 24 presiding officer to serve as the study task force presiding officer;
 25 (b) a member of the peace officers standards and advisory training council;
 26 (c) a member of the youth justice council;
 27 (d) two juvenile detention center administrators who represent different geographical areas of the state;
 28 (e) the administrator of the Montana law enforcement academy; and
 29 (f) a representative from the department of corrections; ~~and~~
 30 ~~(g) a representative of the Montana juvenile probation officers association;~~

1 (2) assist the study task force in conducting a study of juvenile detention training issues in Montana that
2 includes but is not limited to the following topics:

3 (a) the general background and current practices of juvenile detention training in Montana;

4 (b) the general background and current practices related to juvenile detention training in other states;

5 (c) an examination and analysis of the similarities and differences between the curriculum of offerings
6 of the Montana law enforcement academy related to juvenile detention officer training and the Yellowstone
7 County youth services center pilot program as it existed on June 30, 2001;

8 (d) an analysis of the various alternatives available for the delivery of quality, cost-effective training for
9 juvenile detention officers; and

10 (e) an analysis of the administrative and fiscal impacts of the alternatives to delivering juvenile detention
11 officer training; and

12 (3) present a report of its findings, recommendations, and suggested legislation regarding training for
13 juvenile detention officers who are employed in juvenile detention centers to the appropriate interim committee
14 by August 15, 2002, and to the 58th legislature. (Terminates June 30, 2003--sec. 6, Ch. 160, L. 2001.)"

15

16 **Section 40.** Section 46-18-1001, MCA, is amended to read:

17 **"46-18-1001. Definitions.** As used in this part, the following definitions apply:

18 (1) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual
19 living area approved by the supervising authority.

20 (b) When more than one residence or family are located on a single piece of property, the term does
21 not include the residence of any other person who is not part of the social unit formed by the offender's
22 immediate family.

23 (2) "Home arrest" means the use of a person's home for purposes of confinement and home arrest
24 procedures and conditions imposed under this part. It does not include intensive supervision by the department
25 of corrections.

26 (3) "Monitoring device" means an electronic device or apparatus capable of recording or transmitting
27 information concerning the offender's presence in or absence from the home. The device may include an
28 apparatus for testing the offender's breath for the presence of alcohol. A telephone alone is not a monitoring
29 device.

30 (4) "Supervising authority" means:

- 1 (a) in the case of an adult felon, the department of corrections;
- 2 (b) in the case of an adult misdemeanor, a court-approved entity other than the department of
3 corrections; or
- 4 (c) in the case of a juvenile, the juvenile ~~probation services~~ division of the ~~youth court or any other~~
5 ~~person or entity appointed by the court~~ department of corrections.
- 6 (5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent
7 homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual
8 intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any criminal attempt
9 to commit an enumerated offense, or conviction as a persistent felony offender when the offender has a felony
10 conviction for any of the listed offenses within the 5-year period preceding the date of the present conviction."

11

12 **Section 41.** Section 52-2-211, MCA, is amended to read:

13 **"52-2-211. County interdisciplinary child information team.** (1) The following persons and agencies
14 operating within a county may by written agreement form a county interdisciplinary child information team:

- 15 (a) the youth court;
- 16 (b) the county attorney;
- 17 (c) the department of public health and human services;
- 18 (d) the county superintendent of schools;
- 19 (e) the sheriff;
- 20 (f) the chief of any police force;
- 21 (g) the superintendents of public school districts; and
- 22 (h) the department of corrections.

23 (2) The persons and agencies signing a written agreement under subsection (1) may by majority vote
24 allow the following persons to sign the written agreement and join the team:

- 25 (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health
26 care;
- 27 (b) entities operating private elementary and secondary schools;
- 28 (c) attorneys; and
- 29 (d) a person or entity that has or may have a legitimate interest in one or more children that the team
30 will serve.

1 (3) (a) The members of the team or their designees may form one or more auxiliary teams for the
2 purpose of providing service to a single child, a group of children, or children with a particular type of problem
3 or for any other purpose. Auxiliary teams are subject to the written agreement.

4 (b) A member of an auxiliary team must be a person who has personal knowledge of or experience with
5 the child or children in the member's respective field.

6 (4) The purpose of the team and written agreement is to facilitate the exchange and sharing of
7 information that one or more team members may be able to use in serving a child in the course of their
8 professions and occupations, including but not limited to abused or neglected children, delinquent youth, and
9 youth in need of intervention. Information regarding a child that a team member supplies to other team members
10 or that is disseminated to a team member under 41-3-205 or 41-5-215(2) and (3) may not be disseminated
11 beyond the team.

12 (5) The terms of the written agreement must provide for the rules under which the team will operate,
13 the method by which information will be shared, distributed, and managed, and any other matters necessary to
14 the purpose and functions of the team.

15 (6) The terms of the written agreement must state how the team will coordinate its efforts with
16 interdisciplinary child protective teams as provided in 41-3-108 ~~and youth placement committees as provided~~
17 ~~for in 41-5-121.~~

18 (7) To the extent that the county interdisciplinary child information team is involved in a proceeding that
19 is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C.
20 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may
21 release education records to the team. The terms of the written agreement described in subsection (5) must
22 include a requirement that the officials and authorities to whom the information is disclosed certify in writing to
23 the school district that is releasing the education records that the education records or information from the
24 education records will not be disclosed to any other party without the prior written consent of the parent or
25 guardian of the student."

26

27 **Section 42.** Section 52-5-107, MCA, is amended to read:

28 **"52-5-107. Maximum age of commitment.** A youth who ~~has attained~~ is 18 years of age or older may
29 not be committed by ~~any~~ a youth court to the department of corrections juvenile services division. The
30 department of corrections juvenile services division loses jurisdiction and supervision of a youth when the youth

1 reaches 18 years of age."

2

3 **Section 43.** Section 53-1-203, MCA, is amended to read:

4 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

5 (a) ~~adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for~~
6 the implementation of a grievance procedure under Title 41, chapter 5, rules necessary for the siting,
7 establishment, and expansion of prerelease centers, and rules for the admission, custody, transfer, and release
8 of persons in department programs except as otherwise provided by law. However, rules adopted by the
9 department may not amend or alter the statutory powers and duties of the state board of pardons and parole.
10 The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject
11 to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that
12 a prerelease center may not be sited at any location without community support. The prerelease siting,
13 establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a
14 determination of community support or objection to the siting of a prerelease center in the area determined to
15 be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing
16 conducted pursuant to Title 2, chapter 3.

17 (b) subject to the functions of the department of administration, lease or purchase lands for use by
18 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
19 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
20 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
21 persons confined in correctional facilities;

22 (c) contract with private, nonprofit Montana corporations to establish and maintain prerelease centers
23 for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for
24 release into the community, providing an alternative placement for offenders who have violated parole, and
25 providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less
26 restrictive environment than the prison while maintaining adequate security. The centers must be operated in
27 coordination with other department correctional programs. This subsection does not affect the department's
28 authority to operate and maintain prerelease centers.

29 (d) utilize the staff and services of other state agencies and units of the Montana university system,
30 within their respective statutory functions, to carry out its functions under this title;

1 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
2 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
3 in correctional facilities or programs;

4 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
5 education of felony offenders;

6 (g) administer all state and federal funds allocated to the department for youth in need of intervention
7 and delinquent youth, as defined in 41-5-103;

8 (h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

9 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
10 of the specific information, by category, related to youth in need of intervention and delinquent youth in
11 out-of-home care facilities;

12 (j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention
13 and who are committed to the department;

14 (k) administer youth placement funds and youth probation and parole services and related offices and
15 staff;

16 ~~(k)(l)~~ administer youth correctional facilities;

17 ~~(k)(m)~~ provide supervision, care, and control of youth released from a state youth correctional facility;

18 and

19 ~~(m)(n)~~ use to maximum efficiency the resources of state government in a coordinated effort to:

20 (i) provide for delinquent youth committed to the department for probation or placement in a correctional
21 facility; and

22 (ii) coordinate and apply the principles of modern correctional administration to the facilities and
23 programs administered by the department.

24 (2) The department and a private, nonprofit Montana corporation may not enter into a contract under
25 subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-4-313 that limit the term of a contract
26 do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10
27 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit
28 division shall review the contract and make recommendations or comments to the legislative audit committee.
29 The committee may make recommendations or comments to the department. The department shall respond
30 to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the

1 contract.

2 (3) The department of corrections may enter into contracts with nonprofit corporations or associations
3 or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth
4 correctional facilities."

5
6 **NEW SECTION. Section 44. Repealer.** Sections 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-125,
7 41-5-130, 41-5-131, 41-5-132, 41-5-1524, 41-5-1702, 41-5-1703, 41-5-1706, 41-5-1707, 41-5-2001, 41-5-2002,
8 41-5-2003, 41-5-2004, 41-5-2005, 41-5-2006, and 52-5-109, MCA, are repealed.

9
10 **NEW SECTION. Section 45. Transition.** Judicial branch employees who are transferred to the
11 department of corrections under [this act] become subject to the state personnel classification plan on July 1,
12 2003.

13
14 **NEW SECTION. Section 46. Code commissioner instruction.** Whenever a reference to a juvenile
15 probation officer or a probation officer, meaning a juvenile probation officer under Title 41, chapter 5, appears
16 in legislation enacted by the 2003 legislature, the code commissioner is directed to change the reference to an
17 appropriate reference to youth probation and parole officer.

18
19 **NEW SECTION. Section 47. Codification instruction.** [Sections 7 and 8] are intended to be codified
20 as an integral part of Title 41, chapter 5, part 1, and the provisions of Title 41, chapter 5, part 1, apply to [sections
21 7 and 8].

22
23 **NEW SECTION. Section 48. Coordination instruction.** If Senate Bill No. 25 is passed and approved
24 and if it includes a section that amends 41-5-1504, then [section 30 of this act], amending 41-5-1504, is void.

25
26 **NEW SECTION. Section 49. Effective date.** [This act] is effective July 1, 2003.

27 - END -